

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

APR 3 1998

PATRICK FISHER
Clerk

CONRAD J. BRAUN,

Petitioner-Appellant,

v.

CARLA STOVALL, Attorney General
of Kansas,

Respondent-Appellee.

No. 97-3237
(D.C. No. 97-3085-DES)
(D. Kan.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **BRORBY**, and **BRISCOE**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. Therefore, the case is ordered submitted without oral argument.

Petitioner Conrad J. Braun, appearing pro se, appeals the district court's dismissal of his petition for writ of habeas corpus under 28 U.S.C. § 2254.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Braun sought review of state court convictions, indicating his motion for post-conviction relief under Kan. Stat. Ann. § 60-1507 was dismissed in state court on jurisdictional grounds. His appeal to the Kansas Court of Appeals from that dismissal was pending at the time he brought his § 2254 action. On July 2, 1997, the federal district court dismissed the § 2254 action without prejudice to allow Braun to fully and properly exhaust state court remedies.¹

Braun seeks a certificate of appealability and permission to proceed in forma pauperis on appeal. The district court denied a certificate of appealability and denied leave to proceed in forma pauperis on appeal, finding Braun's appeal was frivolous and not taken in good faith. An appeal cannot be taken to this court in a § 2254 proceeding unless a petitioner has obtained a certificate of appealability by making a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253. Our review of Braun's opening brief and the entire court record does not disclose any showing of the denial of a constitutional right. Clearly, Braun had not exhausted his state court remedies when the district court entered its order of dismissal.

Braun's request for a certificate of appealability and his motion to proceed on appeal in forma pauperis are DENIED. The appeal is DISMISSED. The

¹ Braun's appeal to the Kansas Court of Appeals was decided on November 7, 1997, and his subsequent petition for review to the Kansas Supreme Court was denied on December 23, 1997.

mandate shall issue forthwith.

Entered for the Court

Mary Beck Briscoe
Circuit Judge